(2)

No. 99-640

IN THE

Supreme Court of the United States

REDWOOD EMPIRE LIFE SUPPORT, a corporation,

Petitioner,

v.

THE COUNTY OF SONOMA, CALIFORNIA, THE SONOMA COUNTY EMERGENCY MEDICAL SERVICES AGENCY and 911 EMERGENCY SERVICES, INC. dba SONOMA LIFE SUPPORT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether, under the California EMS Act[1], a local EMS Agency may create an exclusive operating area which limits the number of providers of non-emergency ambulance services at a basic life support level.

Whether the defendant governmental entities' adoption of the exclusive operating area challenged in this case was protected from antitrust challenge by California's express intent to "provide for state action immunity" "for activities undertaken by local governmental entities in carrying out their prescribed functions" under the EMS Act[2].

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1. The Emergency Medical Services and the Prehospital Medical Care Personnel Act, Cal. Health & Safety Code §§ 1797-1799. 200.

2. Cal. Health & Safety Code § 1797.6(b).

REASONS FOR DENYING THE WRIT[3]

I. THE DECISION OF THE NINTH CIRCUIT WAS BASED ON ITS APPLICATION OF WELL ESTABLISHED ANTITRUST PRINCIPLES TO ITS INTERPRETATION OF STATE LAW.

This case turns on interpretation of California's EMS Act and the scope of respondents' authority and antitrust immunity under that Act. The specific issue is whether California's express grant of antitrust immunity to governmental entities under the EMS Act includes immunity for limiting the number of providers of non-emergency ambulance services at what is defined as the Basic Life Support level. As noted by the Ninth Circuit this is "essentially an issue of state statutory interpretation." *Redwood Empire Life Support, supra*, 190 F.3d at 953. The Ninth Circuit resolved this issue by holding that as a matter of state law, respondents had the authority to so restrict providers of ambulance services, and therefore, were protected by state action immunity.

Petitioner disagrees with the Ninth Circuit's interpretation of the relevant California statutory provisions. In this regard, it should be noted that the Ninth Circuit's interpretation is in accord with the recent California Court of Appeal decision in *Schaefer's Ambulance Service v. County of San Bernardino*, 80 Cal. Rpt. 2d 385 (Ct. App. 1998), *review denied*, March 31, 1999. Nevertheless, Petitioner wants the Supreme Court of the United States to

3. In lieu of a Statement of the Case, Respondents adopt the statement of facts contained in the opinion of the Ninth Circuit. *Redwood Empire Life Support v. County of Sonoma*, 190 F.3d 949 (9th Cir. 1999).

analyze Respondents' authority under the California EMS Act. This is not a proper task for this Court. Moreover, none of the factors listed in Supreme Court Rule 10 that make certiorari appropriate are present in this case. Accordingly, the petition should be denied.

II. THE CONSIDERATIONS THAT USUALLY SUPPORT CERTIORARI ARE ABSENT HERE.

Rule 10 of the Rules of the Supreme Court of the United States sets forth the considerations this Court weighs in granting or denying certiorari. These considerations are absent here. Although petitioner states that the decision of the Ninth Circuit "conflicts with important Supreme Court Precedent," Petitioner fails to explain how the Ninth Circuit's decision conflicts with the Supreme Court cases it cites, other than to complain about how the Ninth Circuit interpreted California's EMS Act in applying the principles articulated in the Supreme Court cases. Petition for Writ of Certiorari (hereinafter "Pet.") at 10. At most, assuming petitioner is correct that the Ninth Circuit erred in its interpretation of state law, this case would involve misapplication of a properly stated rule of law. Rule 10 states that this is rarely the basis for a grant of a writ of certiorari[4].

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4. Petitioner's petition also complains that neither the Ninth Circuit nor any state court "has adequately addressed what local governmental entity got the power to regulate competition." Pet. at 15. While it is not clear, this appears to be an attempt to resurrect petitioner's argument that Sonoma County was not the proper entity to establish the exclusive operating area. The Ninth Circuit squarely addressed this argument and held it had been waived by petitioner's failure to raise it at trial. *Redwood Empire Life Support, supra*, 190 F.3d at 955. Similarly, petitioner's argument

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Finally, the Ninth Circuit did not decide an important question of federal law. Rather, it applied established federal law to an interpretation of state law adopted both by it and a California Court of Appeal.

CONCLUSION

This case turns on an interpretation of state law by the Ninth Circuit and a California Court of Appeal. It is a question which the Ninth Circuit resolved correctly, in a manner that was in no way inconsistent with decisions of this Court or the Court of Appeal. In short, it is not an appropriate question for this Court's attention. This petition should be denied.

Respectfully submitted,

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that state action antitrust immunity should not be extended to a local government "with a financial interest inimical to the financial interest of the Federal Government" is presented for the first time in this petition. Pet. at 17. This argument appears to challenge the District Court's dismissal of petitioner's broader antitrust challenge to the exclusive operating area which was rejected by the District Court. Although petitioner filed a notice of appeal from that portion of the District Court's judgment, it subsequently dropped its cross appeal before the Ninth Circuit. It cannot revive that cross appeal now.